



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,139	10/06/2003	Shunpei Yamazaki	740756-2659	9428
22204	7590	04/04/2011	EXAMINER	
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128				WILCZEWSKI, MARY A
ART UNIT		PAPER NUMBER		
2822				
			MAIL DATE	DELIVERY MODE
			04/04/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/678,139	YAMAZAKI ET AL.	
	Examiner	Art Unit	
	MARY WILCZEWSKI	2822	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 March 2011.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 7-37 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 7-37 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. 08/536,977.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____ .
 5) Notice of Informal Patent Application
 6) Other: _____.

DETAILED ACTION

This Office action is in response to the Amendment and Reissue Application Declaration by the Assignee filed on 17 March 2011. Claims 7-37 are pending in the application. Claims 1-6 have been cancelled.

The finality of the last Office action has been withdrawn.

Oath/Declaration

The reissue declaration filed with this application is defective because it fails to **specifically** identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

The error statement in the declaration filed on 17 March 2011 does not clearly point out which original claim is in error. For example, "Applicants inadvertently included the feature of "forming **a** metal element diffusion film comprising a semiconductor in contact with **said** silicon nitride film" (*emphasis added*) in **claims 1 and 6** of the original patent. This feature is unnecessary for patentability and narrows the claims below a scope which the inventors had a right to claim in the patent. This feature has been changed to recite "forming a metal element diffusion film comprising a semiconductor over the crystallized semiconductor film" (*emphasis added*) in the claims of this reissue application".

Claim Rejections

Claims 7-37 are rejected as being based upon a defective reissue Declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the Declaration is set forth in the discussion above in this Office action.

Claims 7-37 are rejected under 35 U.S.C. 251 as being improperly broadened in a reissue application made and sworn to by the assignee and not the patentee. A claim is broader in scope than the original claims if it contains within its scope any conceivable product or process which would have infringed the original patent. A claim is broadened if it is broader in any one respect even though it may be narrower in other respects.

A broadening reissue application must be **applied for by all of the inventors** (patentees), that is, the reissue oath or declaration must be signed by all of the inventors.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims

are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 7, 12, 17, and 29-31 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4, 7, 18, and 19 of U.S. Patent No. 5,700,333 (cited by Applicant in the IDS filed on 22 December 2004). Although the conflicting claims are not identical, they are not patentably distinct from each other because the metal element diffusion film of the pending claims is the same

as the phosphorous doped silicon layer of claim 4 and the phosphorus-containing layer of claim 18. Dependent claims 7 and 19 recite that the surface of the crystallized semiconductor layer is etched to make the surface of the crystallized semiconductor layer uneven. Since the gettering layer of claim 4 and the phosphorus-containing layer of claim 18 are formed on the crystallized semiconductor layer, the gettering layer or phosphorus-containing layer must necessarily be removed in order to etch the crystallized semiconductor layer and make its surface uneven. Since the gettering layer comprises phosphorus, the defect density of the gettering layer is artificially increased.

Claims 7, 11, 12, 17, 21, 22, 26-28, and 32-37 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 5-8, 36, 37, 41-43, 42, 43, 45-47, 49-51, and 53-61 of U.S. Patent No. 6,821,828. Although the conflicting claims are not identical, they are not patentably distinct from each other because the metal element diffusion film of the pending claims is the same as the semiconductor film which contains the noble gas element in the patented claims. Both the metal element diffusion film and the semiconductor film of the patented claims remove the metal element from the crystallized semiconductor film. The semiconductor film of the patented claims contains a noble gas element, therefore, the defect density of the semiconductor film is artificially increased.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARY WILCZEWSKI whose telephone number is (571)272-1849. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zandra Smith can be reached on 571-272-2429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Wilczewski/
Primary Examiner, Art Unit 2822